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IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES

Question of Western Sahara

Report of the Secretary-General

1. The General Assembly, at its forty-eighth session, adopted, without a vote, resolution 48/49 on 10 December 1993, on the question of Western Sahara. The present report, which covers the period from 18 September 1993 to 30 September 1994, is submitted in pursuance of paragraph 6 of that resolution.

2. The Secretary-General, in close cooperation with the current Chairman of the Organization of African Unity (OAU), has continued to exercise his good offices with the parties concerned.

3. On 24 November 1993, the Secretary-General submitted a report 1/ to the Security Council in which he provided an account of the further efforts which he and his Special Representative, Sahabazada Yaqub-Khan (Pakistan), had made during the preceding months in order to resolve the issues still standing in the way of the implementation of the settlement plan for Western Sahara. 2/

4. The Secretary-General recalled in his report 1/ the basic positions of Morocco and the Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro (Frente POLISARIO) regarding the compromise proposal on the interpretation and application of the criteria for voter eligibility, 3/ which he had put forward to the two parties during his visit to the mission area from 31 May to 4 June 1993. Explaining certain key provisions of his compromise proposal, he reiterated that those provisions were a sound point of departure for determining potential participation in the referendum. However, the Frente POLISARIO maintained its substantial reservations about the compromise, as it remained concerned about the possible inclusion, in the electorate, of members of some tribal units which it did not consider as existing in the Territory.

5. The Security Council was informed that the Special Representative had explored the possibility of resuming the direct talks between the two parties which had been held in his presence in July 1993 at Laayoune. Encouraged by the interest shown by both sides and by the positive reaction of the Council, he had invited comments of the parties on the conditions and modalities for a second round. Ground rules for such a second round had been laid down in a memorandum of understanding dated 27 September 1993 addressed by the Special Representative to the two parties. It was eventually agreed that the talks would be resumed on 25 October 1993 in New York. While the memorandum of understanding gave to each party the right to choose the composition of its delegation, the presence of former POLISARIO officials in the Moroccan delegation was not considered by the Frente POLISARIO to be conducive to a propitious climate for dialogue. Under the circumstances, the meeting could not take place as scheduled.

6. The Secretary-General reported that, on 3 November 1993, the Chairman of the Identification Commission of the United Nations Mission for the Referendum in Western Sahara (MINURSO), Mr. Erik Jensen (Malaysia), had officially announced the launching of the process leading to the identification and registration of potential voters in the referendum. As a first step, the revised 1974 census lists and instructions for registration were to be published and made available to the population, and the application forms for participation in the referendum were to be distributed. The Identification Commission had prepared a supplement to the revised lists, adding the names of those individuals excluded from the 1991 revision because they had not reached 18 years of age at that time. On 19 November 1993, following a series of meetings with the Identification Commission, the Moroccan authorities had agreed to implement the initial stages foreseen in the work programme of the Commission. The revised lists of the 1974 census and supplement to the lists had thus been announced and made accessible to the population in Laayoune on 22 November 1993. On the same day, the Frente POLISARIO, which had indicated its readiness to begin the process as soon as similar action was taken on the Moroccan side, had taken steps, in consultation with the Commission, to make the revised lists available to the population in one refugee camp in the Tindouf area.

7. In the same report, 1/ the Secretary-General informed the Security Council that the appointment of Brigadier-General André Van Baelen (Belgium) as Force Commander of MINURSO had been renewed on 1 October 1993 for an additional one-year period. Pending the fulfilment of the conditions necessary for the commencement of the transitional period in accordance with the settlement plan, the military mandate of MINURSO had remained restricted to monitoring and verifying the cease-fire in effect since 6 September 1991. Violations of the cease-fire had been without exception of a non-violent nature and thus had not resulted in casualties on either side.

8. The Security Council was also informed that the Police Commissioner, Colonel Jürgen Friedrich Reimann (Germany), had arrived in the mission area early in June 1993, followed by deployment of the Security (Civil Police) Unit of MINURSO. The main responsibility of the security component of MINURSO was to ensure that order was maintained in and around the identification and registration offices.

9. In a letter from the President of the Security Council to the Secretary-General dated 6 December 1993, 4/ the members of the Council agreed that a compromise proposal referred to in his report 1/ was a sound framework for determining potential participation in the referendum for self-determination of the people of Western Sahara as foreseen in the settlement plan. They welcomed his determination to move ahead and proceed with voter identification and registration. They reaffirmed the role of the Secretary-General as guarantor of an objective and impartial referendum and expected any difficulties with the compromise to be resolved by early 1994.

10. On 15 February 1994, in a statement read by his representative at the opening session of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, the Secretary-General said that Western Sahara continued to be of concern to the international community. The General Assembly had recently adopted, for the fifth time, a consensus resolution on the question. He expressed the firm belief that the unanimity over five consecutive years reflected the political will of the international community to bring about the final settlement of the conflict as quickly as possible (A/AC.109/PV.1429).

11. On 10 March 1994, the Secretary-General submitted a report 5/ to the Security Council in pursuance of Council resolution 809 (1993) of 2 March 1993, his previous report to the Council of 24 November 1993 1/ and the letter addressed to him by the President of the Security Council dated 6 December 1993. 4/

12. The Secretary-General reported that, during the preceding months, he and his Special Representative had held consultations at the highest level with the two parties, the two neighbouring countries and OAU to find ways of settling the remaining difficulties. The assurances provided by his Special Representative that objectivity and sound judgement would govern the Identification Commission at every stage of its work had thus far proved to be insufficient to allay the concerns of the Frente POLISARIO over the compromise proposal. Nevertheless, the Secretary-General remained confident that his proposals constituted a sound compromise and that they could be implemented in a fair and judicious manner. He observed that, in the meantime, applications for participation in the referendum had proceeded in Laayoune and the Tindouf area. However, the completion of the identification and registration process remained uncertain in the absence of agreement by the Frente POLISARIO to the compromise as a whole.

13. The Secretary-General recalled that, in the concluding remarks of the compromise text 3/ put forward to the two parties, he had pointed out that it could not, of course, be expected to meet all their concerns or conform entirely to their views. Nevertheless, the interpretation of the criteria and the procedures for verification represented a compromise between conflicting positions that was even-handed and fair. Furthermore, the text was aimed at establishing as judiciously as possible a Saharan electorate for determining the future of the Territory of Western Sahara.

14. The Secretary-General further recalled in his report 5/ that the goal of the settlement plan on which all were agreed was the holding of a free, fair and impartial referendum for the people of Western Sahara, organized and conducted

by the United Nations in cooperation with OAU and without any military or administrative constraints. Four essential conditions had to be met for that goal to be achieved and for MINURSO to be able to carry out its responsibilities effectively and impartially; the support and backing of the Security Council; the full cooperation of the two parties; the cooperation and support of the neighbouring countries; and the necessary financial resources.

15. Taking fully into account the above observations, and in view of the decision of the Security Council, in its resolution 809 (1993), to ensure that the referendum took place without any further delays, the Secretary-General offered three options for the Council to consider. Under Option A, the United Nations would proceed to hold the referendum in December 1994 on the basis of the compromise proposal, regardless of the cooperation of either party. Under Option B, the Identification Commission would continue its work during a prescribed period, by the end of which the Council would review the progress achieved and decide on the next course of action for the fulfilment of the United Nations mandate for Western Sahara. Meanwhile, the United Nations would continue its efforts to obtain the cooperation of both parties on the basis of the compromise proposal. Under Option C, the Council would conclude that the cooperation of both parties in the completion of the identification and registration process could not be obtained and would decide either that the whole MINURSO operation should be phased out within a given time-frame or that the registration and identification process should be suspended but that a reduced United Nations military presence should be retained to encourage respect for the cease-fire.

16. On 29 March 1994, the Security Council unanimously adopted resolution 907 (1994), in which the Council agreed to the course of action outlined in Option B of the Secretary-General's report. 5/ In this course of action, the Identification Commission would analyse all applications received and proceed with the identification and registration of potential voters by 30 June 1994, on the basis of the compromise proposal on the interpretation and application of the criteria for voter eligibility, the terms of reference of the Identification Commission, and the relevant provisions of the settlement plan. The Council supported the Secretary-General's intention to continue efforts to obtain the cooperation of both parties and urged strict compliance with the timetable of Option B, with a view to holding the referendum by the end of 1994. The Secretary-General was requested to report to the Council not later than 15 July 1994 on progress achieved in the work of the Commission as well as other aspects relevant to the fulfilment of the settlement plan.

17. In pursuance of the above resolution, the Secretary-General submitted a report to the Security Council on 12 July 1994. 6/ The Council was informed that the Chairman of the Identification Commission, Mr. Erik Jensen, had been appointed Deputy Special Representative on 15 March 1994. In conformity with the settlement plan, he was in charge of the Mission during any absence of the Special Representative from the Mission area. Upon the adoption by the Security Council of resolution 907 (1994), the Deputy Special Representative requested urgent meetings with both parties to discuss implementation of that resolution. In the course of these meetings, each party agreed to implement the provisions of the resolution. The Frente POLISARIO confirmed their agreement in a letter to the Deputy Special Representative dated 30 April 1994. In a letter to the

Secretary-General dated 20 May 1994, His Majesty King Hassan II reiterated the commitment of the Government of Morocco to respect the deadlines set by the Security Council.

18. During the reporting period, application forms for participation in the referendum were provided to the parties, as requested, for distribution to potential voters. As requested by the Special Representative, both sides began delivering completed application forms to the Identification Commission in May 1994 to enable it to analyse the data received and start identifying and registering potential voters early in June. Meanwhile, clear procedures and guidelines were developed to assist the identification teams in their work. Information sheets were to be given to applicants, explaining the identification process step by step. The sheikhs and official observers, that is, representatives of the two parties and OAU, were also to be provided with written instructions defining their duties. As agreed in exchanges of letters between the Special Representative and the Government of Morocco, Frente POLISARIO and the Government of Algeria between May and October 1993, it was understood that, in the performance of their duties with the Identification Commission, the sheikhs and observers of the parties were accorded immunities and privileges under articles VI and VII of the Convention on the Privileges and Immunities of the United Nations.

19. The Secretary-General observed in his report 6/ that the Identification Commission had focused its efforts on achieving the agreement and cooperation of both parties in order to proceed with the identification of potential voters. As a result, the Commission succeeded in completing, with the cooperation of the parties, all the necessary groundwork for launching the operation. The Commission was to have started identifying potential voters on 8 June 1994, with the assistance of the tribal chiefs (sheikhs) and in the presence of observers of the two parties and OAU. However, difficulties over the designation of OAU observers, described in the following paragraph, could not be resolved in time to enable the Commission to start as scheduled.

20. On 2 June 1994, a note verbale from MINURSO advised Morocco of the imminent start of the identification and registration operation and the participation of two OAU officials who had been designated as observers by the OAU secretariat in August 1993 on instructions from the then Chairman of OAU. Morocco was also advised that those observers would be accorded immunities and privileges in accordance with articles VI and VII of the Convention on the Privileges and Immunities of the United Nations. In a letter to the Secretary-General dated 8 June 1994, the Prime Minister of Morocco confirmed the agreement of his Government to the observers' immunities and privileges. However, he reiterated the position of his Government that they should be designated personally by the current Chairman of OAU, as expressed in a previous letter to the Secretary-General dated 19 August 1993. He specified that they should not be officials of the OAU secretariat. Questioning the impartiality of that organization, he said Morocco had hoped that OAU would, at the very least, have suspended membership of the "Sahrawi Arab Democratic Republic (SADR)" until completion of the referendum.

21. In response to a note verbale from MINURSO dated 8 June 1994, the Frente POLISARIO accepted on 11 June 1994 the status conferred on the OAU observers.

The POLISARIO leadership subsequently stressed that the identification operation could only begin with an OAU presence.

22. In order to overcome the difficulty over the OAU observers, the Secretary-General held extensive consultations with the current Chairman and the Secretary-General of OAU and with other interested parties. In letters to the Minister for Foreign Affairs of Tunisia and the Secretary-General of OAU dated 17 June 1994, he drew the attention of President Ben Ali and Mr. Salim Ahmed Salim to the position of Morocco on the question. Under the circumstances and in order not to delay further the beginning of the identification and registration operation, he invited President Ben Ali, in his capacity as current Chairman of OAU, to designate his representatives as soon as possible, in consultation with the Secretary-General of OAU.

23. In the same report, 6/ the Secretary-General provided an overview of the main elements of the settlement plan, and activities undertaken or to be undertaken accordingly. He recalled that the plan provided for a transitional period starting on D-Day, during which the United Nations would have sole and exclusive responsibility for the organization and conduct of the referendum. All prisoners of war from both sides would be released under the auspices of the International Committee of the Red Cross. The Moroccan troops in the Territory would be reduced to a level not exceeding 65,000 and, with limited exceptions, would be located in static or defensive positions along the same wall. The POLISARIO troops would be confined to locations designated by the Special Representative. All Saharan political prisoners and detainees would be released. Laws or measures which could obstruct the conduct of a free and fair referendum would be suspended. A referendum commission would be established to assist the Special Representative in the organization and conduct of the referendum. Those Western Saharans who were identified as eligible to vote in the referendum and who wished to return to the Territory to do so would be repatriated under the auspices of the United Nations High Commissioner for Refugees. The referendum, by which the people of Western Sahara would choose between independence and integration with Morocco, would be held 24 weeks after D-Day and its results proclaimed within 72 hours.

24. The Secretary-General indicated in his report 6/ that he intended, in subsequent weeks, to give priority to the conclusion of a code of conduct and the confinement of troops in designated locations. On the assumption that the Identification Commission would soon be able to proceed with the identification and registration of potential voters, and that the Security Council subsequently decided to hold the referendum, it was also the Secretary-General's intention to recommend in his next report that the transitional period should start on 1 October 1994 and that the referendum should take place on 14 February 1995.

25. In a statement made by its President on 29 July 1994, 7/ the Security Council noted that, in the light of delays in the registration process, the Secretary-General had proposed a revised timetable for the organization and conduct of the referendum on 14 February 1995. The Council looked forward to his next report, at the end of August 1994, on the basis of which it hoped to be able to take appropriate decisions on the organization and timing of the referendum. It welcomed the goodwill shown by the parties thus far and urged them to continue to cooperate with the Secretary-General and MINURSO to ensure the earliest possible implementation of the settlement plan.

26. As a result of his consultations, the Secretary-General received a letter from the Minister for Foreign Affairs of Tunisia on 23 July 1994, in which President Ben Ali provided a "unique and indivisible" list of four OAU observers, comprising the two observers previously designated and two others. Subsequently, the Identification Commission planned to start identifying and registering potential voters on 8 August 1994. However, owing to the unavailability of one newly designated OAU observer and delays in the arrival of his replacement in the Mission area, the operation did not begin until 28 August.

27. From 28 to 31 August 1994, the Identification Commission identified the first 400 applicants, who were members of two tribal subgroups with which the Commission had decided, in consultation with the parties, to start the process. The operation was conducted with the assistance of the sheikhs concerned and in the presence of the observers of the two parties and OAU. It took place simultaneously at the identification and registration centres set up in Laayoune and one refugee camp in the Tindouf area. During the process, the observers of the parties and OAU were of the general view that the operation had been conducted with appropriate transparency and rigour. The Deputy Special Representative also noted the degree of cooperation between all parties concerned. The operation had to be adjourned on 1 September 1994 because of previous official commitments of one OAU observer, but was resumed on 21 September. Meanwhile, the Identification Commission continued to computerize and analyse the 81,500 completed application forms it had collected thus far. In a letter to the parties dated 21 September 1994, the Deputy Special Representative set 15 October 1994 as the deadline for the receipt of applications. As of 30 September, the Identification Commission had identified a total of about 1,400 potential voters.

28. On the basis of the above, the submission of the next report of the Secretary-General to the Security Council in pursuance of Council resolution 907 (1994) of 29 March 1994 has been deferred to the second half of October 1994. As indicated in the statement by the President of the Security Council of 29 July 1994, 7/ it is expected that the Security Council will then be able to take appropriate decisions on the organization and timing of the referendum.

Notes

1/ S/26797.

2/ S/21360 and S/22464.

3/ S/26185, annex I.

4/ S/26848.

5/ S/1994/283.

6/ S/1994/819.

7/ S/PRST/1994/39.